

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER 97-0354 ST
SALES AND USE TAX

For Tax Periods: 1994 Through 1996

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ISSUES

1. Sales and Use Tax-Floorcovering Sales and Installation

Authority: IC 6-2.5-2-1, IC 6-2.5-4-1, IC 6-2.5-1-2, IC 6-26-1-401(2), IC 6-2.5-9-4, *Cowden & Sons Trucking, Inc. v. Indiana Department of State Revenue*, 575 N.E.2d 718 at 722 (Ind. Tax 1991).

Taxpayer protests the assessment of tax on its sales and installations of floorcoverings.

STATEMENT OF FACTS

Taxpayer is a retailer and installer of carpeting, tiles and related accessories. Taxpayer maintains an inventory of carpeting and tiles. Taxpayer also installs the floorcoverings. During most of the audit period, Taxpayer routinely invoiced these sales under a combined, single calculation adding a separate line item for Indiana sales tax. Taxpayer collected gross retail tax from the customers based upon the disposition cost of the materials and remitted this tax to the Department. Tax was consistently collected on the 60% of the combined charge that Taxpayer alleges represents the charge for the floorcovering. The other 40% of the charge represents the installation. During the last two months of the audit period, Taxpayer's invoices listed the floorcovering separately from the installation services. After an audit, the Department assessed additional sales/use tax, interest and penalties for the tax periods 1994-1996. Taxpayer timely protested the assessment. Further facts will be provided as necessary.

1. SALES AND USE TAX: Floorcovering Sales and Installation

Discussion

Retail transactions made in Indiana are subject to sales tax. IC 6-2.5-2-1. A retail transaction is defined generally as the acquiring and subsequently selling of tangible personal property. IC 6-2.5-4-1. Except for certain enumerated services, sales of services are generally not retail transactions and are not subject to sales tax. There are two instances when an otherwise nontaxable sale of a service is subject to sales tax. The first is when the services are performed with respect to tangible personal property being transferred in a retail transaction and the services take place prior to the transfer of the tangible personal property. IC 6-2.5-4-1(e). The second is when the services are part of a retail unitary transaction. IC 6-2.5-1-2. A unitary transaction is defined as a transaction that includes the transfer of tangible personal property and the provision of services for a single charge pursuant to a single agreement or order. IC 6-2.5-1-1.

The taxpayer in this case sold and installed floorcoverings. The taxpayer installed the floorcoverings in a residence or other structure designated by the purchaser. As explained above, charges for services performed with respect to tangible personal property are subject to sales tax if the services are performed prior to transfer of the property. Pursuant to the commercial law of Indiana, absent an explicit agreement to the contrary, transfer is presumed to take place upon physical delivery of the property. IC 26-1-2-401(2). The installation in this case takes place after the floorcovering has been delivered to the location designated by the purchaser. In the absence of an explicit agreement between the taxpayer and its customers to the contrary, the transfer takes place prior to installation.

The taxpayer sometimes invoiced his customer using a single charge per square yard for the floorcovering and the installation service. These transactions are by definition unitary transactions pursuant to IC 6-2.5-1-1. As such, it would seem that the entire charge would be subject to tax. However, in *Cowden & Sons Trucking, Inc. v. Indiana Department of State Revenue*, 575 N.E.2d 718 at 722 (Ind. Tax 1991), the court stated that "the legislature intends to tax services rendered in retail unitary transactions only if the transfer of property and the rendition of services is inextricable and indivisible." In *Cowden*, the court looked at the taxpayer's records, the overall nature of the taxpayer's business, and the nature of the unitary transactions themselves to determine whether the unitary transactions were inextricable and indivisible. *Id* at 723.

In this case, the taxpayer's records indicate that he did not always combine the charges for the floorcovering and installation. The taxpayer did consistently itemize the tax as required by IC 6-2.5-9-4. Therefore, it is possible to compare taxable amounts on itemized invoices vs. unitemized invoices. However, there is no indication that this was done in the audit.

The taxpayer is in the retail business of selling floorcovering. As is the custom in that business, he also offers installation services. However, it is not required physically or by business practice that customers purchase the floorcovering with installation.

The nature of transactions at issue indicate that customers could negotiate a price for taxpayer's wares with or without installation. When a customer purchased floorcovering and installation, the taxpayer sometimes separated the charges and sometimes not. There is no evidence that the parties intended to enter into or memorialize an inextricable and indivisible contract for goods and services.

Finding

Taxpayer's protest is sustained to the extent that it collected and remitted tax on the amounts it charged for the floorcoverings it sold. Audit will compare the percentage collected on the itemized invoices against the unitemized invoices and adjust the assessment accordingly.

2. TAX ADMINISTRATION: Negligence Penalty

Discussion

Taxpayer also protests the imposition of the negligence penalty pursuant to IC 6-8.1-10-2 (a), which states as follows:

If a person fails to . . . pay the full amount of tax shown on his return on or before the due date for the return or payment, incurs, upon examination by the department, a deficiency which is due to negligence, . . . the person is subject to a penalty.

In this case, Taxpayer asserts it relied on advice it received over the telephone from an Indiana Department of Revenue employee when it set up its system to collect and remit the Indiana gross retail tax. Taxpayer had never been audited before and did not know that its method of collecting and remitting gross retail tax was inappropriate.

Finding

The negligence penalty is waived to the extent Taxpayer is found to owe any additional tax.